IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

Crl.MC.No. 554 of 2007()

CC.79/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

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PETITIONER/ACCUSED:

A.T.GAFOOR, S/O. MOHAMMED,
EZHUTHUMTHODI HOUSE, CHETTIYANGADI,
P.O.NILAMBUR, MALAPPURAM DISTRICT.

BY ADV. SRI.DEVIDAS.U.K

RESPONDENTS/COMPLAINANT/STATE:

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1. P.B.SIVADAS, S/O. BALAKRISHNA MENON,
PULLIAL HOUSE, MELATTUR P.O.,
MALAPPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 554 of 2007

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Dated this the 1st day of March, 2007

O R D E R

The facts revealed in this case are strange and disturbing. The petitioner has faced indictment in a prosecution under Section 138 of the N.I. Act. He was found guilty, convicted and sentenced. This Court ultimately in revision modified the sentence and sentenced the petitioner to undergo imprisonment till rising of Court. He was directed to pay an amount of Rs. 1 lakh as compensation and in default to undergo S.I. for a period of three months. He was further directed to appear before the learned Magistrate on 15.1.2007. The petitioner has admittedly paid a total amount of Rs.40,000/- during the pendency of the appeal/revision as condition for suspension of execution of sentence.

2. When the petitioner went to appear before the learned Magistrate on 15.1.2007, it is submitted at the Bar, that the learned Magistrate insisted that the entire amount of Rs. 1 lakh must be deposited and it is not sufficient if deposit is made of balance of

Rs.60,000/- The petitioner complied with the direction and paid the entire amount of Rs. 1 lakh.

3. I am surprised to hear of such insistence by the learned Magistrate. When suspension is ordered on condition of payment of part of the amount, certainly such payment is to be adjusted towards the amounts due from the accused. After disposal of the proceedings, such amounts must be released reckoning them as amounts deposited towards the amounts directed to be paid under the judgment/order impugned.

4. Be that as it may, the petitioner, who deposited the entire amount of Rs. 1 lakh, prayed for release of the amount of Rs.40,000/- which was available in deposit. That petition was dismissed by the learned Magistrate on the plea that there is no specific direction for return of the amount. It is further stated in the order that an amount of Rs.15,000/- deposited by the petitioner has already lapsed.

5. I direct the learned Magistrate to forthwith release the entire amount of Rs.40,000/- to the petitioner after taking necessary steps to claim back the amounts lapsed. Entire amount of Rs.40,000/- shall be released to the petitioner as expeditiously as possible, at any rate, within a period of one month from the date on which a copy of this order is produced before

the learned Magistrate. The amount which has not been lapsed shall be released immediately.

6. This Crl.M.C. is accordingly allowed.

(R. BASANT)
Judge

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